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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,768	02/21/2006	Siir Kilkis	4842-2	6660
23117 7590 04/08/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
DONELS, JEFFREY				
ART UNIT		PAPER NUMBER		
2837				
MAIL DATE		DELIVERY MODE		
04/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,768

Applicant(s)

KILKIS, SIIR

Examiner

Jeffrey Donels

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-3 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-3 recite a method comprising steps of calculating using several formulae without a useful, concrete, and tangible result (e.g. claim 13).

Applicant argues that by amending the preamble of the claim to read "an apparatus exploited method," that that overcomes the outstanding rejection. However, in this case the preamble does not lend any patentable weight to the claims, and the method steps still do not perform a useful, concrete, and tangible result. See the *Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility*, published in the Official Gazette on 22 November 2005.

Claim Rejections - 35 USC § 112

Claims 4-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 4-23, the phrase "and/or" is vague and inappropriate alternative language. Correction is required.

Regarding Claim 4, the phrase "characterized in that it is a device capable of performing said calculations of the method" does not point out and distinctly claim how the device is put together and functions. The phrase "with other relevant data" is vague and indefinite. Correction is required.

Regarding Claim 5, the word "etc." is vague and inappropriate alternative language. Correction is required.

Regarding Claim 6, the phrase "any sound and/or light generator and/or graphics generator" does not point out and distinctly claim Applicant's invention. Correction is required.

Regarding Claim 7, is the "display apparatus" the same as the 'output device' of the parent claim? What structure or functionality is enabling the user to "point physically or electronically" ? Correction is required.

Regarding Claim 8, "any musical instrument" is vague and indefinite. Correction is required.

Regarding Claim 9, the phrase "i.e. colors or notes" is vague and indefinite. Correction is required.

Regarding Claim 10, the phrase "the form of any three-dimensional object" is vague and indefinite. Correction is required.

Regarding Claim 13, the phrase "in the form of" fails to point out and distinctly claim Applicant's invention. The term "CMIDI" is not clear, as it is not known in the art. The apparatus claim recites narrative, functional language without any supporting structure. The phrases "any time interval," "any storage or retrieval, printing,

transmitting, display, or animation device, depending on the desired form of output" is vague and indefinite. Correction is required.

Regarding Claim 14, the phrase "comprising functions as a means of" is indefinite. The claim is directed to an apparatus, yet recites method steps. The phrase "using the above explained CMIDI file generating apparatus" is indefinite, as the claim is dependent from claim 4 yet this is an apparent reference to claim 13. Correction is required.

Regarding Claim 15, the phrase "for a given artwork, photograph, image, piece of art etc." is vague and indefinite. The apparatus claim recites narrative, functional language without any supporting structure. The phrase "any suitable file format such as MIDI, mp3, etc." is vague and indefinite. Correction is required.

Regarding Claim 17, the phrase "such as loudspeakers, etc." is vague and indefinite. The apparatus claim recites narrative, functional language without any supporting structure. Correction is required.

Regarding Claim 19, the phrase "to be wrapped on various other objects the user might like to recognize" is vague and indefinite. Correction is required.

Regarding Claim 20, the "AV input in any format" is indefinite. The apparatus claim recites narrative, functional language without any supporting structure. Correction is required.

Regarding Claims 21,22, the phrase "characterized in that it is a device capable of performing said calculations of the method" does not point out and distinctly claim

how the device is put together and functions. The phrase "with other relevant data" is vague and indefinite. Correction is required.

Regarding Claim 23, the phrase "any sound and/or light generator and/or graphics generator" does not point out and distinctly claim Applicant's invention. Correction is required.

Allowable Subject Matter

The examiner cannot determine the metes and bounds of the claims; therefore, no art can be applied at this time. Applicant should consider the cited art when amending the claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Donels whose telephone number is 571-272-2061. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2800 ext 37. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey Donels
Primary Examiner
Art Unit 2837

/Jeffrey Donels/
Primary Examiner, Art Unit 2837

